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Punishing Protest: The Australian Move on Democracy

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The progress has been conspicuous, and while it would be foolish to deem the Australian state a democratic one, its rudimentary Westminster form, as it is, finds itself being whittled away by attempts to hollow out protest – or at the very least the means of protest.

The international law canon on this is clear enough, but in a global system still policed by states suspicious of how far such laws go, they sound like noble words across empty spaces. Article 20 of the Universal Declaration of Human Rights 1948 makes the point that people do have a right to freedom of peaceful assembly, a point reiterated in the International Covenant of Civil and Political Rights 1966 (Article 21). There is also a right to engage in participatory democracy "without unreasonable restrictions" under the same covenant (Art 25).

In Tasmania, the Government was only frustrated in part by amendments in the Legislative Council to punish protestors who trespass on workplaces. The initial legislative package introduced mid-year included mandatory fines and minimum jail terms. The fines regime was promised to be particular brutal – a hefty on-the-spot $10,000 for trespassers. As Leader of Government Business, Vanessa Goodwin, observed, "We do support this [compromise] reluctantly if it comes to the crunch."

Effectively, it amounted to a deal scrapping mandatory 3-month jail terms for repeat offenders for increased maximum penalties, though Goodwin refuses to rule out a review at a future date. The desire to punish rarely sleeps an easy, let alone long rest.

Former Greens Senator Bob Brown, and long time environmental campaigner, did not mistake the intended message, which was couched in the language of hyper-legal propriety for those keen on getting on with business. And if history is anything to go by, what is good for Australian business is catastrophic for the environment. "The four-year jail sentence for nature lovers, people who defend Tasmania's forests peaceably, are totally out of kilter."[1] Even the Launceston independent Rosemary Armigate had to remind listeners that, "Just because I don't support mandatory sentences doesn't mean I don't support businesses in this state." The connection between a punitive regime and a successful regime was made all too clear.

It also showed a disproportionate nature, one exceeding that for those "who fail to go to the defence of a distressed child" or those negligently killing their fellow citizens on the road. "It is legislation that you'd think would be more at home in Putin's Russia than in (Will) Hodgman's Tasmania." Evidently, Hogdman does not agree.

Certainly, the Resources Minister, Paul Harris, felt that the Tasmanian voter wanted a tougher stance on protests, seeing it as a matter for "worker rights". "We took this to the election, there was no ambiguity on this whatsoever." While Harris was visibly irritated at the pruning of the more savage aspects of the bill, he still claimed that the "core principles" in the original bill had been "achieved". All this said, while licking his wounds.

Tasmania is by no means the only state to be undergoing this abridgment of liberties to protest. In March, Victoria demonstrated the vital importance of having laws guarding and protecting freedom of assembly. (Australia remains exceptionally negative towards converting liberties into enforceable rights in that sense.) The *Summary Offences and Sentencing Amendment Act* was a grand investiture of bruising powers for the police to move on protesters blocking buildings, obstructing people or traffic (termed an "unreasonable obstruction"), and those deemed at risk of violence.

In a manner similar with the Tasmanian law, habitual violators face the possibility, first, of exclusion orders preventing them from entering the space of protest for up to 12 months or two years' imprisonment for violating the orders. This is the attitude of authorities in Australia: killing the spirit of protest and dissent by the conformism of regulated exclusion.

Like many such laws, the move-on powers were born out of puritanical enthusiasm to quell alcohol-related violence. Sensuousness, and overall the passions, are dangerous. There was something archaic and Georgian about it, the need to stomp out irresponsible behaviour, while actually seeking to draw a ring around all forms of contrarian behaviour. Deputy Commissioner Kieran Walshe would have none of that soppy critique that this was intrusive to civil liberties. The community, that odd entity that has neither form nor substance, had "rights to be safe". That is should also have some phantom right to be safe from government was quite something else.

But the true intention of the laws passed in 2009 became clear at the second reading of the bill by the Attorney General. Victorian voters got a true sense about what sort of community the government had in mind. Such "move-on powers may be used in respect of people engaged in picket lines, protests and other demonstrations."[2]

With passage of the Summary offence changes in 2014, Greens MLC Sue Pennicuik claimed that it was "an absolute assault on the democratic of Victorians to protest – whether it be on the streets or on public land – about issues of concern to them." Of course, Victorians, or Australians, have no such thing. As that plain but useful précis to Victorian law from the Fitzroy Legal Centre explains, the international rights outlined in accepted conventions is one thing; domestic law, however, is quite another, often impervious creature. It is "difficult to assert these rights in Australia, because most of the rights have not been incorporated into Australian domestic law".[3]

The appetite for a bill of rights in Australia is small and undernourished, numbed over decades by an almost mystical worship of Parliament's infinite wisdom and the reasonableness – whatever that means – of the common law. But the persistent attempts by parliamentarians to essentially treat their representative chambers as closed shops in opposition to their constituents, whom they regard with both contempt and suspicion, suggests the ever greater need for enshrined laws of protest and disagreement. Governments need watching with keen, informed eyesight. Wilful blindness is their friend. It follows that the angry, persistent protester is their foe.

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Notes

[1] http://www.abc.net.au/news/2014-11-07/bob-brown-warns-of-bad-karma-over-anti-protest--laws/5875494

[2] http://rightnow.org.au/topics/bill-of-rights/after-democracy-victorias-new-anti-protest-laws/

[3] http://archive.is/Od8t1
